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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TOTAL WEALTH  
MANAGEMENT, INC., and JACOB  
KEITH COOPER,

Defendants.

Case No. 15-cv-00226-BAS-DHB

**ORDER:**

- (1) DENYING DEFENDANT  
JACOB KEITH COOPER'S  
MOTION TO STAY [ECF  
No. 173];**
- (2) GRANTING SEC'S  
MOTION FOR SUMMARY  
JUDGMENT [ECF. No.  
151];  
AND**
- (3) ENTERING FINAL  
JUDGMENT OF  
PERMANENT  
INJUNCTION AGAINST  
DEFENDANT JACOB  
KEITH COOPER**

1 Before the Court is the Securities and Exchange Commission’s (“SEC” or  
2 “Commission”) motion for summary judgment against Defendant Jacob Keith  
3 Cooper. (ECF No. 151.) The SEC seeks summary judgment that Mr. Cooper violated  
4 Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940 (“Advisers  
5 Act”), and Rule 206(4)-8 thereunder. The SEC seeks a permanent injunction against  
6 Mr. Cooper, and an order requiring him to pay disgorgement with prejudgment  
7 interest and civil penalties. Mr. Cooper previously consented to the entry of a  
8 preliminary injunction against him in this action, prohibiting violations of Sections  
9 206(1), (2), and (4) of the Advisers Act, and Rule 206(4)-8 thereunder. Mr. Cooper  
10 has not opposed the instant motion. However, he has filed a motion to stay these  
11 proceedings pending the outcome of a state criminal case against him initiated in  
12 March 2017. (ECF No. 173.)<sup>1</sup> Both the SEC and the Receiver have filed oppositions  
13 to Mr. Cooper’s motion. (ECF Nos. 176, 177.)

## 14 DISCUSSION

### 15 I. MOTION TO STAY<sup>2</sup>

16 Whether to grant a motion to stay is in the discretion of the district court and  
17 should be made “in light of the particular circumstances and competing interests  
18 involved in the case.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Fed. Sav. &*  
19 *Loan Ins. Corp., v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). The court should  
20 consider:

- 21 (1) “the interest of the plaintiffs in proceeding expeditiously with the  
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23 <sup>1</sup> Mr. Cooper has requested oral argument on his motion to stay. (ECF  
24 No. 173.) The Court finds that this motion can be decided on the paper submissions  
and declines to hold oral argument. Civ. R. 7.1(d)(1).

25 <sup>2</sup> Mr. Cooper’s motion to stay (ECF No. 173) failed to specify a hearing  
26 date in contravention of the Local Rules. Civ. R. 7.1(b), (e). Moreover, Mr. Cooper  
27 failed to comply with this Chamber’s Standing Order as it pertains to noticed  
28 motions. *See* Standing Order, Section 4. Nevertheless, the Court will rule on the  
substance of Mr. Cooper’s motion to stay.

1                   litigation” and any possible prejudice from the delay;

2           (2)     the burden on the defendant if the case proceeds;

3           (3)     the convenience of the court and the efficient use of judicial resources;

4           (4)     “the interests of persons not parties to the civil litigation;” and

5           (5)     “the interest of the public in the pending civil and criminal litigation.”

6                   *Molinaro*, 889 F.2d at 902–03.

7           In the context of these factors, the Court believes that a stay is not appropriate  
8 in this case. This case has been pending for two and a half years. It is set for trial in  
9 three months. Plaintiffs have filed their Motion for Summary Judgment  
10 demonstrating that there remains no triable issue of fact for trial. Mr. Cooper has  
11 failed to file an opposition despite an extension given by the Court. In fact, as the  
12 SEC observes, Mr. Cooper has never contested the substance of the SEC’s allegations  
13 at any stage in this case. (ECF No. 176 at 9.) Since there appears to be no triable  
14 issue of fact, Mr. Cooper will not be forced to assert his Fifth Amendment rights at  
15 trial. He has additionally already given his deposition in this case, and much of his  
16 deposition testimony forms the basis for the Motion for Summary Judgment.  
17 *Molinaro*, 889 F.2d at 903. Any assertion of his Fifth Amendment rights at this late  
18 date will only have a minimal impact on this litigation.

19           Nor would staying this case save the Court judicial resources. The case is  
20 ready for a decision on summary judgment. The Court had prepared its summary  
21 judgment order granting the motion when this last-minute Motion to Stay was filed.  
22 At this point, staying the case would not conserve additional judicial resources.  
23 Moreover, the public has an interest in the expeditious litigation of this case, which  
24 would be frustrated by further delay. *See Keating v. Office of Thrift Supervision*, 45  
25 F.3d 322, 325 (9th Cir. 1995).

26           Furthermore, and most importantly, the Altus Fund investors have been  
27 waiting for the resolution of this case so that their missing funds can be recouped.  
28 These investors, as well as the SEC, which has devoted time preparing for trial and

1 the Motion for Summary Judgment, would be substantially prejudiced if the case  
2 were stayed. In contrast, the only party that would benefit from the stay is Mr.  
3 Cooper, who could continue to delay paying back the investors he owes.

4 Accordingly, the Court DENIES Defendant Jacob Keith Cooper's Motion to  
5 Stay. (ECF No. 173.)

## 6 **II. MOTION FOR SUMMARY JUDGMENT**

7 A district court shall grant summary judgment if "there is no genuine dispute  
8 as to any material fact and the movant is entitled to judgment as a matter of law."  
9 Fed. R. Civ. P. 56(a). A fact is "material" if it might affect the outcome of the suit  
10 under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
11 248 (1986). A dispute as to a material fact is "genuine" if the evidence is such that a  
12 reasonable jury could return a verdict for the nonmoving party. *Id.*

13 "[A] motion for summary judgment may not be granted based on a failure to  
14 file an opposition to the motion[.]" *Heinemann v. Satterberg*, 731 F.3d 914, 917 (9th  
15 Cir. 2013). Even where the party to whom the motion for summary judgment is  
16 directed fails to respond, the moving party still has the burden to demonstrate the  
17 absence of any material fact. *Cristobal v. Siegel*, 26 F.3d 1488, 1494–95 (9th Cir.  
18 1994). The court may, however, grant an unopposed motion for summary judgment  
19 if the motion and supporting materials show there is no issue of material fact, and the  
20 movant is entitled to summary judgment as a matter of law. *See White by White v.*  
21 *Pierce Cty.*, 797 F.2d 812, 814–15 (9th Cir. 1986); Fed. R. Civ. P. 56(e)(3).

22 The SEC filed and served its motion for summary judgment on June 9, 2017.  
23 (ECF No. 151.) Mr. Cooper's opposition brief was due on July 10, 2017, and as of  
24 August 25, 2017, he has not responded. The Commission represents that it reached  
25 out to Mr. Cooper's current counsel of record, and to other counsel who have assisted  
26 Mr. Cooper at other points throughout this case, to no avail. (ECF No. 152.)

27 Having reviewed the SEC's motion for summary judgment, and having  
28 carefully considered the attached declarations, deposition testimony, and other

1 supporting materials, the Court concludes the SEC has met its burden to demonstrate  
2 the absence of any material fact and entitlement to judgment as a matter of law.  
3 Accordingly, the Court GRANTS summary judgment on the SEC's claims that Mr.  
4 Cooper violated Sections 206(1), (2), and (4) of the Advisers Act, and Rule 206(4)-  
5 (8) thereunder.

## 6 **FINAL JUDGMENT AND ORDER**

7 Having granted the SEC's motion for summary judgment, the Court enters  
8 FINAL JUDGMENT as follows:

### 9 **I.**

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the SEC's  
11 Motion for Summary Judgment against Defendant Jacob Keith Cooper is  
12 GRANTED. (ECF No. 151.)

### 13 **II.**

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant  
15 Jacob Keith Cooper is permanently enjoined from, directly or indirectly, by the use  
16 of any means or instruments of transportation or communication in interstate  
17 commerce or by the use of the mails:

- 18 A. with scienter, employing devices, schemes or artifices to defraud clients  
19 or prospective clients; or  
20 B. engaging in transactions, practices, or courses of business which  
21 operated as a fraud or deceit upon clients or prospective clients;  
22 in violation of Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1)  
23 and (2).

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
25 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
26 binds the following who receive actual notice of this Final Judgment by personal  
27 service or otherwise: (a) Defendant Jacob Keith Cooper's officers, agents, servants,  
28 employees, and attorneys; and (b) other persons in active concert or participation with

1 Defendant Jacob Keith Cooper or with anyone described in (a).

2 **III.**

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
4 Jacob Keith Cooper is permanently enjoined from, directly or indirectly, while acting  
5 as an investment adviser to a pooled investment vehicle, by the use of any means or  
6 instrumentality of interstate commerce,

- 7 A. making untrue statements of a material fact or omitting to state a  
8 material fact necessary in order to make the statements made, in the light  
9 of the circumstances under which they were made, not misleading, to  
10 any investor or prospective investor in the pooled investment vehicle; or  
11 B. engaging in acts, practices, or courses of business that are fraudulent,  
12 deceptive, or manipulative with respect to any investor or prospective  
13 investor in the pooled investment vehicle;

14 in violation of Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule  
15 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
17 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
18 binds the following who receive actual notice of this Final Judgment by personal  
19 service or otherwise: (a) Defendant Jacob Keith Cooper's officers, agents, servants,  
20 employees, and attorneys; and (b) other persons in active concert or participation with  
21 Defendant Jacob Keith Cooper or with anyone described in (a).

22 **IV.**

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
24 Jacob Keith Cooper is liable for disgorgement of \$262,787 (total disgorgement of  
25 \$412,787 less a credit of \$150,000 for funds paid), representing profits gained as a  
26 result of the conduct alleged in the Complaint. Mr. Cooper is also liable for  
27 prejudgment interest on his net disgorgement obligation of \$262,787 in the amount  
28 of \$21,567, for a total disgorgement of \$284,354. Mr. Cooper shall also pay a civil

1 penalty in the amount of \$300,000 pursuant to Section 209(e) of the Advisers Act, 15  
2 U.S.C. § 80b-(9)(e). Defendant shall satisfy this obligation by paying \$284,354 plus  
3 the amount of the civil penalty set forth above (i.e., \$300,000) to the Securities and  
4 Exchange Commission within 14 days after entry of this Final Judgment. The total  
5 amount due to the Commission within 14 days after entry of this Final Judgment is  
6 \$584,354.

7 Defendant may transmit payment electronically to the SEC, which will provide  
8 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made  
9 directly from a bank account via Pay.gov through the SEC website at  
10 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified  
11 check, bank cashier's check, or United States postal money order payable to the  
12 Securities and Exchange Commission, which shall be delivered or mailed to:

13 Enterprise Services Center  
14 Accounts Receivable Branch  
15 6500 South MacArthur Boulevard  
16 Oklahoma City, OK 73169

17 and shall be accompanied by a letter identifying the case title, civil action number,  
18 and the name of this Court; Defendant Jacob Keith Cooper as a defendant in this  
19 action; and specifying that payment is made pursuant to this Final Judgment.

20 Defendant shall simultaneously transmit photocopies of evidence of payment  
21 and case identifying information to the SEC's counsel in this action. By making this  
22 payment, Defendant relinquishes all legal and equitable right, title, and interest in  
23 such funds and no part of the funds shall be returned to the Defendant.

24 The SEC shall hold the funds (collectively, the "Fund") and may transfer them  
25 to the receiver or propose a plan to distribute the Fund subject to the Court's approval.  
26 The Court shall retain jurisdiction over the administration of any distribution of the  
27 Fund. If the SEC staff determines that the Fund will not be distributed, the SEC shall  
28 send the funds paid pursuant to this Final Judgment to the United States Treasury.

1 The SEC may enforce the Court's judgment for disgorgement and prejudgment  
2 interest by moving for civil contempt (and/or through other collection procedures  
3 authorized by law) at any time after 14 days following entry of this Final Judgment.  
4 Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28  
5 U.S.C. § 1961.

6 **V.**

7 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for  
8 the purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy  
9 Code, 11 U.S.C. § 523, any debt for disgorgement, prejudgment interest, civil penalty  
10 or other amounts due by Defendant under this Final Judgment or any other judgment,  
11 order, consent order, decree, or settlement agreement entered in connection with this  
12 proceeding, is a debt for the violation by Defendant of the federal securities laws or  
13 any regulation or order issued under such laws, as set forth in Section 523(a)(19) of  
14 the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

15 **VI.**


16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court  
17 shall retain jurisdiction over this matter for the purpose of enforcing the terms of this  
18 Final Judgment.

19 **VII.**

20 There being no reason for delay, pursuant to Rule 54(b) of the Federal Rules  
21 of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and  
22 without further notice.

23 **IT IS SO ORDERED.**

24 **DATED: September 27, 2017**

25   
26 **Hon. Cynthia Bashant**  
27 **United States District Judge**  
28